Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1676 of 2002 (S/B)

Ram Kumar S/o Sri Premlal,
I.D.P.L. Virbhadra, Quarter No. A 1323,
Rishikesh, District – Dehradun.

..... Petitioner

Versus

1. State of Uttaranchal through Secretary, Education Department, Uttaranchal, Nainital.
2. Public Service Tribunal, Uttaranchal,
3. District Inspector of Schools, Dehradun.
4. Principal, Rashtriya Inter College, Askot, Uttarkashi.

..... Respondents

Date: July 07, 2006.

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

This petition has been filed by the petitioner seeking writ of certiorari to quash the order dated 07.10.2002 passed by Public Service Tribunal, contained in Annexure No. 4 to the writ petition, upholding the termination of the petitioner.

2. The petitioner's case briefly stated is that he was appointed temporarily on the post of PARICHARAK (Class IV) on ad hoc basis by respondent No. 4 on 25.10.1999 in the Govt. Inter College Arakot, District Uttarkashi. The grievance of the petitioner is that on 04.11.1999 his services were terminated without assigning any reason or issuing any show cause notice.

Against the said termination order dated 04.11.1999 the petitioner filed the petition before the Public Service Tribunal (*hereinafter* referred to as the Tribunal). The case was contested by the respondents before the Tribunal and they averred that the petitioner's appointment was purely of temporary and ad-hoc nature. The appointment of the petitioner was validly cancelled and even otherwise it was beyond the competence of the respondent-3 and thoroughly illegal as it was made under the political pressure. The Tribunal having gone through the case of the parties reached to the conclusion that the terms and conditions of the appointment order of the petitioner themselves demolish his case of any right to hold the post till the issuance of show cause notice. It was also specifically mentioned in the appointment letter of the petitioner that his services could be terminated at any point of time and in any case on further orders of the department. The appointment was made on the direction of the then State Minister, Hill Development, Uttar Pradesh when there was a complete ban on fresh recruitment by the Government. The Tribunal further held that the appointment of the petitioner itself was highly tainted with political pressure throwing all the requisite service rules and dismissed the petition. Feeling aggrieved, the petitioner came up in this writ petition.

3. We heard the learned counsel appearing on behalf of the petitioner as well as Sri K.P. Upadhyay, learned Standing Counsel for the respondent/State of Uttaranchal.

4. The submission of the petitioner is that he is fully qualified to be appointed as *Paricharak* and before canceling his appointment he was not given any opportunity to show cause.

5. The respondents contended that the petitioner was appointed on the direction and order of the then Hill Development Minister in defiance of the rules and Government Order. The appointment of the petitioner was rightly cancelled. The order of the cancellation passed by the District Inspector of School on 27.10.1999, just after two days of appointment was communicated to the petitioner by registered post on 4.11.1999, hence there is no question of opportunity to show cause, because the said appointment was prima facie void ab initio.

6. We have gone through the impugned order passed by the Tribunal and other material on record. We are of the opinion that the appointment of the petitioner was illegal and it was made without adopting the procedure according to rules. The District Inspector of School made compliance of the instructions issued by the State Minister appointing the petitioner but then the department immediately responded by letter dated 27.10.1999 directing the Principal either to withdraw the appointment and if it has already been made, to cancel it forthwith, because the appointment was made when there is complete ban on fresh recruitment by the Government. The Tribunal committed no error or illegality in holding that the appointment of the petitioner was illegal as it was made against the rules and

regulations. The matter is concluded by finding of fact and we are not inclined to interfere the finding recorded by the Tribunal.

7. The writ petition is devoid of merit and is dismissed. No order as to costs.

(B.S. Verma,J.)
07.07.2006

(P.C. Verma,J.)
07.07.2006

P.Singh